

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Frank Kluz
Lancaster, Ohio

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File No. EB-02-DT-610
NAL/Acct. No. 200232360008
FRN 0007-4207-22

FORFEITURE ORDER

Adopted: August 12, 2003

Released: August 14, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Frank Kluz, Lancaster, Ohio, for willful violation of Section 95.411 of the Commission’s Rules (“*Rules*”).¹ The noted violation involves Mr. Kluz’s use of an external radio frequency power amplifier (“linear amplifier”) as part of his Citizens Band (“CB”) radio station.

2. On July 23, 2002, the Commission’s Detroit, Michigan Field Office (“Detroit Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Mr. Kluz in the amount of five thousand dollars (\$5,000).² A letter responding to the *NAL* was filed on Mr. Kluz’s behalf on October 3, 2002.

II. BACKGROUND

3. On June 22, 2001, the City of Lancaster, Ohio, Office of the Law Director and City Prosecutor Office, sent a complaint letter to the Detroit Office. The complaint alleged that a CB radio station operated by Mr. Kluz was causing interference to home electronics equipment, such as televisions, radios and telephones, in his neighborhood.

4. On July 19, 2001, the Detroit Office sent a Quiet Hours letter to Mr. Kluz directing him, his family, and any guests visiting him, not to operate any base or mobile radio transmitter from his property or adjacent roadways from the time the letter was received until he contacted the Detroit Office to make arrangements for an inspection of his CB radio facility.³

¹ 47 C.F.R. § 95.411.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232360008 (Enf. Bur., Detroit Office, rel. July 23, 2002).

³ Pursuant to Section 95.423 of the Rules, 47 C.F.R. § 95.423, a CB operator must comply with any restricted hours of CB station operation set forth in an official notice from the FCC that the station is causing interference.

5. On August 1, 2001, Mr. Kluz sent a response to the Detroit Office. In this response, Mr. Kluz indicated that he would comply with the order not to operate his CB radio station, but did not make arrangements for an inspection of his CB station.

6. On October 16, 2001, the City of Lancaster, Ohio, Office of the Law Director and City Prosecutor Office, sent a second complaint letter to the Detroit Office. The complaint alleged that Mr. Kluz's CB radio transmissions continued to cause interference to neighborhood televisions, radios and telephones, thereby violating the Quiet Hours letter.

7. On October 31, 2001, an agent from the Detroit Office traveled to Lancaster, Ohio and monitored for transmissions from Mr. Kluz's CB station, but did not observe any transmissions from his station at that time. The agent went to 245 Talmadge Avenue, Lancaster, Ohio, the address stated in the complaints as Mr. Kluz's residence. The agent inspected Mr. Kluz's CB station and found it to be in compliance with applicable FCC rules and regulations. Accordingly, on November 14, 2001, the Detroit Office sent a letter to Mr. Kluz releasing him from the conditions that had been imposed on his operation of the CB station by the Quiet Hours letter.

8. On January 21, 2002, the Office of Congressman David L. Hobson referred a complaint to the Detroit Office from his constituents regarding interference to telephones and home electronic equipment allegedly caused by Mr. Kluz's CB radio station.

9. On June 10, 2002, the Detroit Office received a complaint from a resident in Lancaster, Ohio. The complaint alleged that Mr. Kluz's CB radio station was causing interference to neighborhood home electronics equipment.

10. On June 25, 2002, agents from the Detroit Office traveled to Lancaster, Ohio and monitored CB transmissions using a mobile direction finding vehicle. The agents detected CB transmissions on 27.185 MHz (CB Channel 19) and, at approximately 8:26 p.m., positively identified the source of the transmissions to be a residence at 245 Talmadge Avenue. The agents then proceeded to the residence at 245 Talmadge Avenue, interviewed Mr. Kluz, and inspected his CB radio station. The agents observed a Palomar TX-200B linear amplifier attached to Mr. Kluz's CB transceiver. Mr. Kluz told the agents that he had obtained the linear amplifier from a friend two days earlier and was checking it out for his friend. Measurements taken by the agents indicated that the linear amplifier had an output power that ranged from 12.5 watts to 75 watts, which exceeds the permissible power limits specified in Section 95.410 of the Rules.⁴

11. On July 23, 2002, the Detroit Office issued a *NAL* for a \$5,000 forfeiture to Mr. Kluz for using a linear amplifier as part of his CB radio station in willful violation of Section 95.411 of the Rules.⁵ Mr. Kluz did not respond to the *NAL*. However, on October 3, 2002, the Commission received a letter from Dr. James LeSar, M.D., responding to the *NAL* on behalf of Mr. Kluz. In this letter, Dr. LeSar asserts that due to the nature of his medical problems, Mr. Kluz is unable to understand and unable to willfully violate Section 95.411 by having a linear amplifier attached to his CB station. According to Dr.

⁴ Section 95.410 of the Rules provides that a CB station transmitter power output must not exceed 4 watts carrier power (AM) and 12 watts peak envelope power (SSB) under any conditions. 47 C.F.R. § 95.410.

⁵ Under Section 1.80(b)(4) of the Rules, \$5,000 is the base forfeiture amount for use of unauthorized equipment. 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I.—Base Amounts for Section 503 Forfeitures.*

LeSar, Mr. Kluz suffers from several medical conditions, including dementia and a possible brain tumor, and has poor reading comprehension. Dr. LeSar's letter indicates that he did not personally examine Mr. Kluz. Dr. LeSar wrote that he was including documentation to demonstrate to the Enforcement Bureau that Mr. Kluz was unable to willfully violate Section 95.411; however, no documentation was included.

12. On June 17, 2003, the Enforcement Bureau sent a letter to Dr. LeSar requesting the referenced documentation. We received Dr. LeSar's response to our letter on June 30, 2003.

13. Accompanying Dr. LeSar's response was an evaluation of Mr. Kluz taken by Dr. Marc Miller for the Bureau of Disability Determination, on February 6, 2002. In the evaluation, Dr. Miller concluded that Mr. Kluz suffers from depression, cognitive difficulties, dementia, and memory problems. The evaluation further indicated that Mr. Kluz had a driver's license, drove to the evaluation appointment, and is able to manage his own funds. The evaluation did not state that Mr. Kluz was unable to willfully violate Section 95.411, or that Mr. Kluz was unable to know the actions he takes.

III. DISCUSSION

14. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Mr. Kluz's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

15. Section 95.411 of the Rules prohibits attaching a power amplifier to a CB transmitter in any way. Furthermore, under Section 95.411(c) of the Rules, there is a presumption that a linear or other external RF power amplifier has been used if it is found in the possession of, or on the premises of, the CB radio station operator and there is other evidence that the CB station was operated with more power than allowed by the rules. On June 25, 2002, FCC agents positively identified Mr. Kluz's CB station as the source of CB transmissions on 27.185 MHz (CB Channel 19) and immediately thereafter inspected his CB station. This inspection revealed that the station consisted of a CB transceiver with an attached linear amplifier and power indicator meter. Mr. Kluz acknowledged at the time of the inspection that he had been operating the CB station with the attached linear amplifier. Accordingly, we conclude that Mr. Kluz violated Section 95.411 of the Rules by operating a CB radio station with a linear amplifier.

16. We also conclude that this violation was willful within the meaning of Section 503(b) of the Act. The term "willful," as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.⁹ Rather,

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and

the term “willful” simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules.¹⁰ Dr. LeSar asserts in his letter that Mr. Kluz is unable to understand and unable to willfully violate Section 95.411 because he suffers from several medical conditions, including dementia and a possible brain tumor, and has poor reading comprehension. Dr. LeSar does not indicate, however, that Mr. Kluz was ever examined or questioned specifically to determine whether he understands what a linear amplifier is or how to turn it on. Moreover, based on correspondence from Mr. Kluz to the Detroit Office and the agents’ interview of Mr. Kluz, at the time of the inspection, Mr. Kluz clearly knew that he had hooked up a linear amplifier to his CB radio station because he admitted to the agents that he was checking it out for a friend. Finally, we determine that the information provided by Dr. LeSar and Dr. Miller concerning Mr. Kluz’s inability to act willfully is not sufficient to overcome our conclusion that Mr. Kluz knew he was using a linear amplifier. Specifically the psychological evaluation does not state that Mr. Kluz is unable to know the actions he takes, and therefore the evaluation does not refute Mr. Kluz’s own statement that he was operating a linear amplifier. Accordingly, based on the evidence in the record, we find that Mr. Kluz willfully violated Section 95.411 of the Rules.

17. We have examined Mr. Kluz’s information, relating to his ability to pay, and determined that the proposed \$5,000 forfeiture would impose a financial hardship on Mr. Kluz. Therefore, we will reduce the forfeiture amount from \$5,000 to \$500.

18. Finally, we note that we have not received any recent complaints concerning Mr. Kluz’s use of a linear amplifier. However, if we receive further complaints stemming from Mr. Kluz’s improper use of a linear amplifier, we will take appropriate additional enforcement action.

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Frank Kluz **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred dollars (\$500) for willful violation of Section 95.411 of the Rules.

20. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232360008 and FRN

deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ *Id.*

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

0007-4207-22. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

21. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Frank Kluz, 245 Talmadge Avenue, Lancaster, Ohio 43130.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ See 47 C.F.R. § 1.1914.